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**PLEASE REPLY TO
ATLANTIC COUNTY OFFICE**

December 16, 2013

Via ECF Filing

Hon. Renée Marie Bumb
United States District Court/Camden
Mitchell H. Cohen United States Court House
One John F. Gerry Plaza – Courtroom 4D
PO Box 887
Camden, New Jersey 08101

Re: Taharqu Dean v. Deptford Township et al.
Civil Action Number: 13-cv-05197-RMB-KMW
Qual-Lynx File Number: X122590
Our File Number: 46640-35

Dear Judge Bumb:

Our firm represents Defendants, Deptford Township, Chief of Police Daniel Murphy, Michael DiVito and John Storms in the above-noted matter.

Pursuant to Rule I.A of this Court's Individual Rules and Procedures, please consider this a request for a pre-motion conference regarding a Motion to Dismiss Chief Daniel Murphy from the instant lawsuit. In the instant case, Chief Murphy is being sued in both his personal and official capacity under 42 U.S.C. Section 1983 and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, et seq.; however, as will be

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discussed below Plaintiff's Complaint fails to allege a legally cognizable claim against Chief Murphy in either his personal or official capacity.

1. 42 U.S.C. Section 1983 Personal Capacity Claims

The Complaint contains no facts to suggest Chief Murphy's personal liability because the Complaint fails to allege any facts to suggest Chief Murphy was personally involved in the alleged wrongful conduct, which is necessary to establish a claim against a public official in his personal capacity. See, e.g., Dare v. Twp. of Hamilton, 2013 U.S. Dist. LEXIS 164129 (D.N.J. November 18, 2013)(dismissing plaintiff's personal capacity claims against the Chief because plaintiff's complaint failed to allege any facts to suggest the personal involvement of the Chief in the alleged constitutional violation) citing Sample v. Diecks, 885 F.2d 1099, 1117-18 (3d Cir. 1989); see also, Davis v. Danberg, 2012 U.S. Dist. LEXIS 2167, *10-9 (D. Del. January 9, 2012)(dismissing a plaintiff inmate's claims against the facility's Commissioner, Deputy Commissioner, Bureau Chief, Warden, Deputy Warden, and Captain because the Complaint alleged no facts regarding their personal involvement in the alleged constitutional violation or in creating an illegal custom or policy that resulted in the alleged constitutional violation); Rodriguez v. City of Camden, 2011 U.S. Dist. LEXIS 9981 (D.N.J. February 2, 2011). Thus, claims against Chief Murphy in his personal capacity should be dismissed.

2. 42 U.S.C. Section 1983 Official Capacity Claims

Plaintiff's Complaint also fails to allege a legally cognizable claim against Chief Murphy in his official capacity because Deptford Township has been named as a party in this lawsuit; and, a suit against a public employee in his official capacity is the same as a suit against the public entity itself. Dare v. Twp. of Hamilton, 2013 U.S. Dist. LEXIS 164129, *19-20 (D.N.J. November 18, 2013)(dismissing Hamilton Township Police Chief from the lawsuit because the plaintiff's official capacity claims against the Chief were redundant of plaintiff's claims against the township); quoting, Rodriguez v. City of Camden, 2011 U.S. Dist. LEXIS 9981 (D.N.J. February 2, 2011), citing, Dull v. W. Manchester Twp. Police Dep't, 2008 U.S. Dist. LEXIS 21412, *7 (M.D. Pa. Mar. 17, 2008)(“Claims

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asserted against both a government entity and the entity's agents in their official capacity warrant dismissal of the redundant official-capacity suits"). Thus, Plaintiff's claims against Chief Murphy in his official capacity should be dismissed as duplicative of his claims against Deptford Township.

3. NJCRA Claims

Plaintiff's claims against Chief Murphy under the New Jersey Civil Rights Act should be dismissed for the reasons outlined above. The NJCRA is the State of New Jersey's equivalent to 42 U.S.C. Section 1983 and is construed analogously with 42 U.S.C. Section 1983. See, e.g., Dare v. Twp. of Hamilton, 2013 U.S. Dist. LEXIS 164129, *21-22 (D.N.J. November 18, 2013) quoting, Baklayan v. Ortiz, 2012 U.S. Dist. LEXIS 48705, *20 (D.N.J. April 5, 2012), citing, Didiano v. Balicki, 2011 U.S. Dist. LEXIS 41785, *9 (D.N.J. Apr. 18, 2011).

Thus, Plaintiff's Complaint fails to allege a legally cognizable claim against Chief Murphy. Therefore, Chief Murphy should be dismissed from the instant lawsuit.

Thank you for your time and attention to this matter.

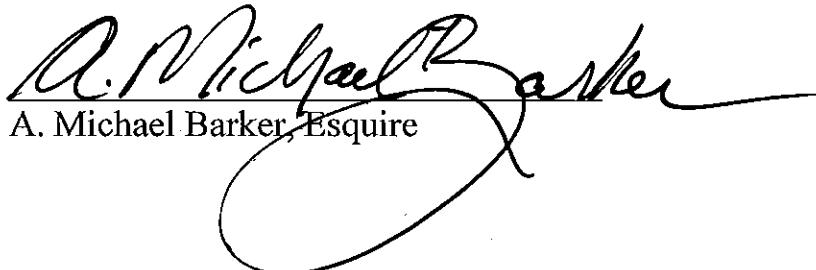
Very Truly Yours,

BARKER, GELFAND & JAMES
a Professional Corporation

By:

A. Michael Barker, Esquire

AMB/jps/vej



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cc:

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